IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

MACA.No. 489 of 2007()

OPMV.956/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PERUMBAVOOR
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APPELLANT/PETITIONER

VIDYA G,D/O.A.G.GOPINATHAN,GOPINATHA
BHAVANAM,PALLITHODE P.O,THURAVOOR,CHERTHALA.

BY ADV. SRI.C.R.SIVAKUMAR
SRI.SANTHOSH PETER (MAMALAYIL)
SRI.BIPIN J.PRAKASH
SMT.C.B.BHAGYALAKSHMI

RESPONDENTS: RESPONDENTS/RESPONDENTS
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1. THE MANAGING DIRECTOR,K.S.R.T.C
THIRUVANANTHAPURAM.

2. KUNJAPPAN M.K,MALIYAKAL HOUSE,
ANGAMALY P.O.

BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC
SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.A.C.A.No. 489 of 2007

Dated this the 20th June, 2007.

J U D G M E N T

The petitioner in O.P.(M.V.) No.956/2000, on the file of the Motor Accidents Claims Tribunal, Perumbavoor, is the appellant herein. The appellant was travelling in a stage carriage bus, owned by the first respondent, bearing Registration No.KL-2883, from Angamaly to Cherthala. When the bus reached near Athani, a collision took place between the bus in which the appellant was travelling, with a mini lorry bearing Registration No.KL-IL-6757, and the appellant sustained injuries. She filed the Original Petition claiming an amount of Rs.80,000/= as compensation. It was alleged that the accident occurred due to the negligence of the second respondent, the driver of the bus, and she sustained injuries on her face, which were very serious in nature. The Tribunal found that the accident occurred due to the negligence of the second respondent, and awarded an amount of Rs.19,910/= as compensation. Complaining that the compensation awarded is highly inadequate, appellant has filed this appeal claiming enhancement of the compensation amount.

2. The learned Standing Counsel appearing for the Kerala State Road Transport Corporation opposed the prayer. He contented that the accident occurred not due to the negligence of the second respondent, but due to the negligence of the driver of the mini lorry, and the appellant had not impleaded the owner and driver of the mini lorry. Hence, the appellant is not entitled to get any compensation.

3. The Tribunal had discussed the matter at length. The second respondent was driving the vehicle from south to north. The evidence on record shows that, when it reached near the place of accident, the second respondent made an attempt to over take another tempo van, and, at that time, the collision took place, between the bus and the mini lorry. Mini Lorry was coming from north to south. The scene mahazar shows that the width of tarred road, at the place of accident, is 6.75 metres, and the accident occurred on the wrong side of the bus. So, the finding of the Tribunal that accident occurred due to the negligence of the bus is perfectly correct and no interference is called for.

4. The appellant was awarded an amount of Rs.6000/= for pain and sufferings, an amount of Rs.4000/= for loss of amenities, and an amount of Rs.4000/= for dis figuration. Thus, the total amount of compensation awarded is Rs.19,910/=. On the date of accident, appellant who was a student was aged about 23 years and unmarried. Ext.A4 wound certificate shows that there was contusion and laceration over nose, lacerated wound over left mallar region and contusion upper lip with laceration internally. It was also noted that she was referred for further treatment to Oral and Maxillo Facial Surgeon. Ext. A6 is the medical certificate issued by the Oral and Maxillo Facial Surgeon, Lakshmy Hospital, which show that the appellant had bilateral TMJ clicking sound (subluxation of tempero mandibular joint) as well as palatally inclined left central incisor. It was also stated that Intermaxillary fixation was done to immobilize the jaws, thereby, creating a rest for the joint, and an Orthodontic appliance was given to re-align the left central incissor.

5. During the pendency of the proceedings, the appellant filed I.A.No.3313/2004 to issue a direction to the Superintendent, General Hospital, Ernakulam, to examine the appellant, by constituting a medical board, and issue a certificate.

That application was allowed, and appellant was referred before the Superintendent. But the Superintendent, General Hospital, had referred the appellant back to the Medical College Hospital stating that the appellant must be examined by a Maxillo Facial Surgeon. Accordingly, she was referred to the Medical College Hospital, Kottayam, and examined by a medical board. The Board had noted that the appellant was suffering from Subluxation and Non vital ^{1}+. The Board assessed the disability as 8%. Though the certificate was produced before the Tribunal, the Tribunal did not consider the disability certificate. The nature of treatment under went by the appellant shows that compensation awarded to her under the head of treatment expenses, pain and suffering, loss of amenities, dis figuration etc. are inadequate. Therefore, I am of the view that an additional amount of Rs.5000/= each ought to have been awarded for treatment expenses, pain and sufferings, loss of amenities and dis figuration. So, the appellant is entitled to get an additional compensation of Rs.20,000/=. I do not find any reason to modify the amounts awarded on other counts.

6. In the result, the appeal is allowed in part. An award is passed allowing the appellant to recover an amount of Rs.20000/= as additional compensation from the first respondent, Kerala State Road Transport Corporation, with 6% interest, from the date of petition, till the date of realisation. The first respondent is directed to deposit the above amount in favour of the appellant, and on deposit, the appellant can withdraw the amount.

K.PADMANABHAN NAIR,
JUDGE

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